

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

United States of America,
Plaintiff,

V.

One Rural Property,
Defendant.

CASE NUMBER: 96-1793 (HL)

MOTION

Date Filed: 4/18/01 Docket # 44 ☐ Plffs ☒ Defts

Title: Motion Under Rule 41 for the Return of Property Seized by U.S. Government

Opp'n Filed: Docket #

ORDER

Claimant Pedro Claudio Gines ("Gines") moves the Court to return a parcel of real property that he forfeited to the Government in this civil forfeiture proceeding. Gines' first argument relating to the return of his property is that the Government did not inform the grand jury that indicted Gines in his criminal case of the Government's intention of forfeiting Gines' property. Unfortunately for Gines, the forfeiture in this case is civil, not criminal, and thus is not part of his criminal case. This civil forfeiture is a separate civil action.

Gines' second argument relating to the return of his forfeited property is that the Government did not adequately demonstrate that the property was the proceeds of an exchange of an illegal controlled substance. *See* 21 U.S.C.A. § 881(a)(6) (West 2000). Entirely negating this claim is the fact that Gines has already settled this civil forfeiture action with the Government via a consent decree of forfeiture. *See* Dkt. Nos. 38-40.

Gines makes two other arguments that are unrelated to his forfeited property. First, he claims that his sentence in his criminal case is illegal because of the Supreme Court's ruling in *Apprendi v. New Jersey*, 120 S.Ct. 2348 (2000). Second, he argues that he was not allowed to appear before the grand jury that indicted him. Leaving aside the extremely-doubtful merits of these claims, they are not properly brought as part of a motion for the return of seized property. Instead they belong in a motion under 28 U.S.C. § 2255. Unfortunately for Gines, however, he has already filed a motion under § 2255. This motion was denied as time-barred on March 31, 2000 in civil case 99-2339.

Wherefore, Gines' Motion Under Rule 41 for the Return of Property Seized by U.S. Government is hereby denied.


HECTOR M. LAFFITTE
Chief U.S. District Judge

 Date 6/15/01



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